

REMARKS

Claims 1, 3-9 and 11-13 are pending. Reconsideration is requested.

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Office Action is Incomplete: Office Summary is In Error

As Applicant submitted in the previous Response filed October 22, 2009 ("previous Response"), in item 3 of the previous Office Action mailed July 22, 2009 ("previous Office Action"), entitled "Response to Arguments," the Examiner asserts:

Applicant's arguments, . . . filed 4/23/09, with respect to the pending claims have been fully considered and are persuasive. The previous rejection of the pending claims has been withdrawn. However, . . . claim 1 presents a nonstatutory obviousness-type double patenting issue.

(Emphasis added, See, previous Office Action at page 2).

That is, in the previous Office Action the Examiner withdrew the previous rejection of pending claims 1, 3-9 and 11-13 and presented a nonstatutory obviousness-type double patenting rejection of only claim 1.

That is, as the Applicant submitted in the previous Response at least independent claims 9, 11, and 12 have evidently been found by the Examiner as allowable and claims 3-8 and 13 dependent on base claim 1 have been found as the Examiner as allowable if rewritten in independent form.

But, Block 6 of the Office Action Summary indicates that "claims 1, 3-9 and 11-13" are rejected in error.

The current Office Action does not have any support for a rejection of any of claims 3-9 and 11-13.

Further, the current Office Action does not include a response to Applicant's arguments that claims 3-9 and 11-13 are allowed or allowable. Thus, the Office Action is incomplete.

Conclusion

Thus, if the case is not found in condition for allowance the finality should be withdrawn and a new complete and corrected Office Action issued with the due date accordingly reset.

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Double patenting rejection of claim 1 is moot

The Examiner rejects claim 1 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of US Patents 6,638,317 and 9,963,830. The

rejection is traversed.

Applicant has already timely filed terminal disclaimers disclaiming a terminal part of any patent granted on the subject application which would extend beyond the expiration date of U.S. Patents No. 6,963,830 and No. 6,638,317.

Conclusion

Thus, the rejection should be withdrawn and claim 1 allowed.

Conclusion

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.


Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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